IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.480 OF 2003

IN

SUMM.SUIT NO.1340 OF 2003.

Ami @ Amee Keyur Shah .. Plaintiff

versus

Champakal Ratilal Gandhi .. Defendant

Mr.R.L.Dharia for Plaintiff.

Mr.S.R.Upadhyay i/b A.B.Varma for Defendant.

CORAM : D.G. KARNIK, J

DATED : 14th March 2005.

P.C:-

1. Heard learned counsel for the parties. The plaintiff lent and advanced to the defendant a sum of Rs.1,50,000/-. The defendant executed a promissory note on 3rd January, 2000 agreeing to pay on demand to the plaintiff a sum of Rs.1,50,000/- together with interest at 1.65 % p.m.

2. By filing an affidavit in reply the defendant has admitted receipt of the sum of Rs.1,50,000/-. The defendant however resists the suit on the grounds which are considered below :

3. It is firstly contended that name of the plaintiff is not properly written. In the title of the plaint, the plaintiff has given her maiden name as well married name. Giving of the maiden name as well as married name does not mean that there are two plaintiffs. The plaintiff cannot be faulted for mentioning her maiden name as well as married name.

4. It is secondly contended that the plaintiff is a money lender and she is not entitled to recover the loan. The plaintiff has stated in the rejoinder that she is not a money lender. In Ganesh Madhavrao Hawaldar vs Mithalal Keshaolal Dave reported in 1999 (1) MLJ 110 this Court has held that one of two solitary transactions of advancing of money would not make a person a money lender. The defendant has not filed any sur-rejoinder denying or pointing out the plurality of money lending transactions allegedly done by the plaintiff. In the circumstances, the defence

that the defendant is a money lender is also not a defence of substance. It was lastly contended that the defendant has repaid to the plaintiff a sum of Rs.30,031/- by cheque. The plaintiff has admitted receipt of Rs.30,031/- but has stated that the amount has been received towards the interest. The plaintiff also mentions payment of interest. Therefore, it cannot be said that is the amount received by the plaintiff towards the principal.

5. The defendant claims to have paid to the plaintiff a sum of Rs.63,000/- in cash through the broker. Firstly, it was not shown that the broker was authorised to receive any payment on behalf of the plaintiff. Secondly, no receipt for having made any payment to the broker are produced. The plaintiff has denied receipt of any sum in cash. The defendant has not even produced the statement of account showing any payment to the plaintiff either directly or through the broker. In the circumstances, the defence that the defendant has paid Rs.63,000/- to the plaintiff through the broker is also not a defence of substance.

6. In the facts and circumstances, only conditional leave can be granted to the defendant. However taking

into consideration the defence that the defendant claims to have paid Rs.63,000/- it would be appropriate to permit the defendant to defend the suit subject to depositing the admitted balance sum of Rs.87,000/- in the court. The defendant is granted conditional leave to defend the suit subject to his depositing in court a sum of Rs.87,000/- within a period of two weeks. On such deposit the plaintiff shall be entitled to withdraw the same by furnishing security to the satisfaction of the Prothonotary and Senior Master. On deposit of the money, suit shall stand transferred to the list of commercial causes.

D.G.KARNIK, J